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February 17, 2022

VIA ECF

The Honorable Thomas J. McAvoy
United States District Court
Northern District of New York
15 Henry Street
Binghamton, New York 13901

Re: *Brigitte Mabe v. Wal-Mart Associates, Inc.*, Civil Action No.
1:20-cv-00591-TJM-CFH

Dear Judge McAvoy:

On behalf of Defendant Wal-Mart Associates, Inc. ("Defendant"), I request permission to provide the Court with a substantive response to Plaintiff Brigitte Mabe's ("Plaintiff") "Notice in Further Opposition to Defendant's Renewed Motion to Dismiss," which was filed today. (Dkt. No. 33.) Plaintiff's submission impermissibly quotes, interprets and makes legal arguments based on the New York Court of Appeals' decision that we brought to the Court's attention yesterday, without seeking leave to do so. *See, e.g., Solis v. Commonwealth Fin. Sys., Inc.*, No. 18-cv-6130, 2020 U.S. Dist. LEXIS 86792, at *4-*5 (E.D.N.Y. May 15, 2020) (granting motion to strike notice of supplemental authority); *Barron v. Snyder's-Lance, Inc.*, No. 13-cv-62496, 2014 U.S. Dist. LEXIS 80755, at *2-*6 (S.D. Fla. June 13, 2014) (striking notice of supplemental authority that included "[t]wo pages of quotations and plaintiffs' gloss as to the meaning of the[] cases"); *Eli Lilly & Co. v. Crabtree*, 485 F. Supp. 2d 982, 997 (S.D. Ind. 2006) (striking portions of legal argument from a notice of supplemental authority); *Seidman v. Paradise Valley Unified Sch. Dist. No. 69*, 327 F. Supp. 2d 1098, 1121 (D. Ariz. 2004) (same).

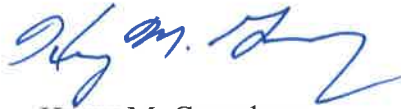
This is not the first time Plaintiff has attempted to improperly make legal arguments long after the parties fully briefed the pending motion to dismiss. On August 30, 2021, for example, Plaintiff submitted legal arguments based on a recent court decision, pretending that she was merely calling supplemental authority to the Court's attention. In response, the Court granted Defendant permission to file a response within 10 days limited to 10 pages. (*See* Text Order, dated 9/2/2021, Dkt. No. 27.) We respectfully request that the Court do likewise in this instance.

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Thank you for your consideration of this request.

Respectfully submitted,

GREENBERG TRAURIG, LLP



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cc: All Counsel of Record - ***VIA NYSCEF***

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